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RECEIVED
CLERK OF THE SENATE
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via email

September 10, 2018

Lee Cassis
Senate Clerk
Room 211M, Bldg. 1
State Capitol Complex
Charleston, WV 25305

Re: *In re Matter of Impeachment Proceedings Against Respondent Chief Justice
Margaret Workman*

Dear Clerk Cassis:

Please find enclosed, for filing in the above referenced matter, Respondent's Motion for a Bill of Particulars.

A copy has been provided to all parties as indicated on the Certificate of Service.

Sincerely,



Benjamin L. Bailey

BLB/md
Enclosure

- cc: Honorable Paul T. Farrell
- Honorable Roger Hanshaw
- Honorable Ray Hollen
- Honorable John Shott
- Honorable Rodney Miller
- Honorable Andrew Byrd

IN THE WEST VIRGINIA SENATE

***IN THE MATTER OF IMPEACHMENT PROCEEDINGS AGAINST
RESPONDENT CHIEF JUSTICE MARGARET WORKMAN***

Honorable Paul T. Farrell
Acting Justice of the
Supreme Court of Appeals of West Virginia
Presiding Officer

**RESPONDENT'S MOTION
FOR A BILL OF PARTICULARS**

Respondent Chief Justice Margaret Workman, by counsel, respectfully moves the Presiding Officer for a ruling that Article XIV, as presented to the Senate, is insufficient to permit Respondent to prepare an adequate defense unless and until the Board of Managers submits a bill of particulars explaining the charges. It is a fundamental tenet of due process that “the accused must be fully and plainly informed of the character and cause of the accusation. The Constitution so requires. . . . A bill of particulars is for the purpose of furnishing details omitted from the accusation or indictment, to which the defendant is entitled before trial.” *State v. Ervin*, 238 W. Va. 77, 88, 792 S.E.2d 309, 320 (2016) (citation and internal quotation marks omitted); *see also* W. Va. R. Crim. P. 7(f) (“The court may direct the filing of a bill of particulars.”).

Although the word nowhere appears within its text, Article XIV appears to charge Respondent — together with three other justices — with “maladministration,” an impeachment ground listed, but not defined, in the State Constitution. *See* W. VA. CONST. Art. 4, § 9. The article alleges generally that the four justices “waste[d] state funds” in remodeling offices, coopting State-owned vehicles for personal use, installing “unneeded” computers in their residences, purchasing working lunches, and framing personal items. The article asserts that some of those expenditures could have been avoided had the Court timely adopted travel policies, individual tax-reporting

directives, and home computer policies. Funds spent in those and other categories could have been reduced, according to the article, by more exacting oversight of State purchasing cards and property inventories, by keeping better records of State vehicles, and by curtailing individual discretion with respect to purchases made by change order. The article charges that the alleged shortcomings in policy and administration constituted a failure by all the justices, “individually and collectively.”

Respondent, however, is not on trial together with the other three justices impeached by the House of Delegates. If Respondent is declared guilty of Article XIV at the conclusion of her individual proceeding before the Senate, she alone will be subject to removal. Assuming, strictly *arguendo*, that Article XIV recites the essential elements of “maladministration,” Respondent is yet entitled to know in advance of trial the specific acts or omissions the Board of Managers intends to prove, and the corresponding portions of the charge to which those acts or omissions are intended to relate. *See Fed’n Window Glass Co. v. Cameron Glass Co.*, 58 W. Va. 477, 52 S.E. 518, 520 (1905) (“The object of a bill of particulars is to specify the claim and prevent surprise on the trial.” (citation omitted)); *cf. syl. pt. 3, State v. Baltimore & O. R. Co.*, 68 W. Va. 193, 69 S.E. 703 (1910) (trial court’s refusal to require bill of particulars where rail company charged with obstructing public road — but indictment failed to specify offending train and crew — “is prejudicial, and may be cause for reversal”).

It is likewise necessary for Respondent to be informed of the relevant timeframe underlying the charges and, depending on that temporal breadth, the theory of culpability. That is, does the Board of Managers seek to hold Respondent constitutionally responsible for administrative acts and omissions occurring when she was but a single voting justice of the Court, or is her potential exposure confined to the Court’s alleged acts and omissions during her tenure as Chief Justice in

2015? If the latter, then is it the Board of Managers' position that Respondent's title and office of Chief Justice render her vicariously liable for actions taken by majority vote, regardless of how she voted? Those questions suggest distinctively different means of preparing Respondent's defense to Article XIV at trial, but trial is much too late for the answers to finally be revealed.

The risk of surprise and resultant prejudice is particularly palpable here. Without a particularized description of the charges and theories against her, Respondent will have an inordinately short time to prepare to defend herself against a multiplicity of allegations, many of which, confusingly, were refuted on their face by the evidence before the House. For example, it is undisputed that Respondent "requested to develop written policies for P-card usage" while she was Chief Justice, though those efforts were frustrated by the Administrative Director. *See* Transcript of House Judiciary Committee Proceeding Regarding the Impeachment of West Virginia Supreme Court Justices ("Tr.") at 1691-92, 1772-75. Similarly, Respondent as Chief Justice asked that an organizational chart be developed for the Court, *see id.* at 1764, repeatedly and forcefully requested the Administrative Director to pinpoint the source of the Court's "spend-down" of its reappropriated funds, *see id.* 348-49, 1227-28, and questioned the spending on renovations to the Court's leased space at City Center East, *see id.* 377-78. Respondent was exonerated of any wrongdoing with respect to the use of State vehicles, *see id.* 64, and the House expressly declined to impeach her for "unnecessary and lavish spending in the renovation and remodeling of her personal office." *Id.* 1953.

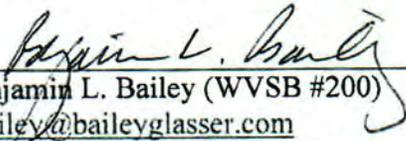
Plainly, many of the allegations set forth in Article XIV do not apply to Respondent. But if she is nonetheless constrained to expend valuable time and resources to defend against those dubious accusations of wrongdoing, her defense to the remainder of Article XIV — and, indeed, to both articles of which she stands accused — will inevitably and irretrievably be prejudiced. The

Board of Managers, of course, is keenly aware of the state of the evidence, and it would pose no undue burden for it to supply a bill of particulars to remedy the real possibility of unfair prejudice accruing to Respondent if she is compelled to prepare her defense in consideration of the myriad and vague allegations currently comprising Article XIV.

WHEREFORE, Respondent respectfully requests that the Presiding Officer grant this motion and rule that the Board of Managers must file a bill of particulars with respect to Article XIV that identifies: (i) the specific allegations on which it will rely in proceeding against Respondent; (ii) the timeframe during which Respondent allegedly committed an act or omission justifying her removal from office; and (iii) whether the Board of Managers will pursue any theory of joint or vicarious culpability to prove its case.

CHIEF JUSTICE MARGARET WORKMAN

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Honorable Paul T. Farrell
Acting Justice of the
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Presiding Officer

CERTIFICATE OF SERVICE

I hereby certify that on this 10th day of September, 2018, a true and correct copy of the foregoing **RESPONDENT'S MOTION FOR A BILL OF PARTICULARS** was served by electronic mail and by depositing a true copy thereof in the United States mail, first class, postage prepaid, in envelopes upon the following:

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